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No. _____

IN THE

Supreme Court of the United States

TERM

VINCENT T. IMPROTO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CARROLL & CARROLL,
Attorneys for Petitioner,
Vincent T. Improto,
Suite 1206,
615 Chestnut Street,
Philadelphia, Pennsylvania 19106
(215) 925-4100

JOHN ROGERS CARROLL
THOMAS COLAS CARROLL
Counsel of Record

Pennsylvania Appellate Printing Co.—(215) 545-1707

QUESTIONS PRESENTED FOR REVIEW

1. In this Labor-Management Reporting And Disclosure Act prosecution, where it was known that one or more of the Government trial witnesses had been pretrial informants against Petitioner, did not the District Court deny Petitioner's rights to due process of law and confrontation by using a *Rovario* balancing test, which Petitioner contends is inapplicable where the Government chooses to call its informants to testify at trial, to prohibit him from cross-examining any and all Government witnesses as to their informant status?

2. Does not the Government, in a Labor-Management Reporting And Disclosure Act prosecution for failure to disclose a material fact on a financial reporting form, have a burden of proving beyond a reasonable doubt that the omitted fact is one required to be disclosed under the Act or does "material fact" have a broader meaning permitting the trial court, as here, to submit for jury resolution an issue properly deemed a question of law, that is legal title to money at a certain time under undisputed facts?

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IN THE

SUPREME COURT OF THE UNITED STATES

TERM

No. _____

VINCENT T. IMPROTO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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Petitioner Vincent T. Improto prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit which affirmed his judgment of conviction entered upon a jury verdict of guilt.

STATEMENT OF GROUNDS ON WHICH JURISDICTION IS INVOKED

Petitioner Vincent T. Improto seeks a writ of certiorari to review the judgment (App. B)* rendered by the United States Court of Appeals for the Third Circuit on January 7, 1983. The judgment affirmed petitioner's criminal conviction entered in the United States District Court for the Eastern District of Pennsylvania following a jury trial (App. A).

A petition for rehearing *en banc* was denied by the Third Circuit Court of Appeals (App. C) on February 3, 1983. By Order dated March 15, 1983, Mr. Justice Brennan extended the time to file a Petition for Writ of Certiorari to and including May 4, 1983 (App. D).

The Supreme Court has jurisdiction to review the judgment below by writ of certiorari pursuant to 28 U.S.C. §1254(1).

PERTINENT STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

The following statutes set forth in the Appendix are pertinent:

29 U.S.C. section 439(b), section 209(b) of Title II of the Labor-Management Reporting and Disclosure Act.

The following constitutional provisions set forth in the Appendix are pertinent:

The Fifth and Sixth Amendments to the United States Constitution.

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* App. refers to the Appendix annexed to this Petition.

STATEMENT OF THE CASE

A. Procedural History

Petitioner was convicted by a jury of a one-count violation, Section 209(b) of Title II of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §439(b), for failure to disclose in a 1980 annual financial report (Form LM-2) a material fact, *i.e.* that a union officer had been paid by the union indirect disbursements in excess of the amounts reported; the jury acquitted on counts for two earlier years.

Petitioner was sentenced to a term of probation with community service, fined, and ordered to comply with 29 U.S.C. §504 (relating to disqualification from union office for certain convictions). The District Court's opinion denying post-trial motions is annexed at App. A. The Court of Appeals for the Third Circuit affirmed without opinion (App. B).

B. Concise Statement of Facts

During the period covered by the Information, Petitioner was the President of Teamsters Philadelphia Local Union 830 (Local 830). Gordon Grubb, a co-defendant, was the Secretary-Treasurer of that local. The Information (App. G) alleged generally that early in 1977 Grubb raised a pre-existing expense allowance for business agents to sixty dollars and thereafter requested each of the business agents recipients to return sixty dollars per week to him which, in fact, they did.

At trial, the ten testifying business agents stated, in general, that each week Grubb's secretary would cash the agent's paychecks; deliver to them the proceeds including the sixty dollars expense allowance; thereafter they would return to her sixty dollars which she, in turn, delivered to Grubb. The testimony of the agents varied on their reasons and understanding about this arrange-

ment; some agents testified that they believed this was a mandatory kickback necessary for them to retain their jobs; others testified that the delivery of their money to Grubb was purely voluntary and was in furtherance of Grubb's stated desire to use the money for union political contribution purposes (App. 6a).

There was no evidence that Petitioner had participated in this arrangement or that he had profited personally, directly or indirectly, through the arrangement. The evidence showed that Grubb was the chief financial officer of the union and Petitioner had no direct control over the union's financial operations, its books or records. The evidence did show, however, that in late 1979 Petitioner learned that the agents were returning sixty dollars per week from their checks to Grubb. Petitioner consulted counsel and after describing the arrangement between Grubb and the agents and assuring counsel that he was not personally involved, he was advised "to stay the hell away from it" and not to participate in it or discuss it with anyone (A-385/90).* Petitioner, testifying in his own behalf at trial, stated that it never occurred to him that Grubb's arrangement with the business agents had implications under the LMRDA and the annual reporting requirements of the LM-2.

The Government's case at trial was premised on the disclosure/reporting implications of the Grubb-agents arrangement and, in particular, Petitioner's criminal liability for any false reporting since, as Local President, he had signed the LM-2 forms during the relevant time period.

Schedule 9 of the LM-2 form requires the disclosure of all disbursements to officers. Disbursements include "salary, allowances, and other direct and indirect dis-

* "A" refers to Petitioner's Appendix in the Court of Appeals, which Petitioner has certified for transmission to this Court under Rule 19.2.

bursements." Disbursements to employees are required to be disclosed on Schedule 10. For the conviction year (as well as acquittal years) the expense allowance had been disclosed on Schedule 10 (*i.e.* disbursements to the agents) but not disclosed on Schedule 9 (*i.e.* disbursement to an officer, to wit: Grubb). Under the Government's theory of the case, these disbursements were required to have been reported on Schedule 9, rather than Schedule 10. Petitioner's conviction rests on this point.

During the investigative stage of the case, the Government obtained search warrants based, in part, on disclosures of confidential informants with knowledge of the arrangement. During grand jury litigation, nine of the ten business agents (all of whom were later to testify at trial) executed a sworn statement to the effect that he had not been an informant (App. 12a). Prior to trial, Petitioner moved for an order disclosing the identity of the informant for the purposes, among others, of determining whether the affidavits for the search warrants had contained misrepresentations. The district court conducted an *ex parte, in camera* proceeding, from which Petitioner's counsel was excluded, and thereafter revealed to defense counsel that the confidential informants had been immunized by the Government and would testify as Government witnesses at trial. The lower court, however, refused to order the Government to disclose the identities of such informants (even though they were among the Government's trial witnesses) (App. 12a). The lower court went a step further and prohibited Petitioner's trial counsel from questioning *any* Government witness at trial concerning their status, if any, as an informant (A-72). Accordingly, the Government's case at trial included the testimony of one or more persons who had earlier acted as informants against Petitioner yet Petitioner's counsel was barred from asking any witness (including, of course, the actual informant or informants) on cross-examination about their informant status.

REASONS FOR GRANTING THE WRIT

1. In this Labor-Management Reporting And Disclosure Act prosecution, where it was known that one or more of the Government trial witnesses had been pretrial informants against Petitioner, the District Court denied Petitioner's rights to due process of law and confrontation by using a *Rovario* balancing test, which Petitioner contends is inapplicable where the Government chooses to call its informants to testify at trial, to prohibit him from cross-examining any and all Government witnesses as to their informant status.

2. The Government, in a Labor-Management Reporting And Disclosure Act prosecution for failure to disclose a material fact on a financial reporting form, has a burden of proving beyond a reasonable doubt that the omitted fact is one required to be disclosed under the Act, which the Government failed to do, and "material fact" does not have a broader meaning permitting the trial court, as here, to submit for jury resolution an issue properly deemed a question of law, that is legal title to money at a certain time under undisputed facts.

ARGUMENT

Point I

Petitioner was denied due process of law and his right of confrontation by the prohibition on cross-examination of Government trial witnesses on their informant status.

It is undisputed on this record that one or more of the Government trial witnesses had been an informant against Petitioner before trial. It is probable on this record that one or more of these informants had submitted a false affidavit, with knowledge of the Government, to conceal his informant status before trial. It is unknown on this record the possible bias, prejudice and motive to lie of such informant(s) in their trial testimony since all such inquiry was prohibited. It is likewise unknown whether the informant(s) had been paid by the Government and whether the immunity conferred by the Government was in consideration of their trial testimony and whether the immunity served to protect the informant(s) from prosecution on other matters. None of these questions, all of which would have been legitimate and traditional issues on cross-examination, can be answered on this record because the trial court foreclosed all such inquiry in the interest of preserving the identity and confidentiality of the informant's pretrial relationship with the Government.

In determining that Petitioner was not entitled to use cross-examination to learn the identities of the specific government witnesses who had been informants, and cross-examine them about their status, the trial court relied on the balancing test set forth in *Roviaro v. United States*, 353 U.S. 53 (1957). Applying that balancing test, the lower court concluded that informant's privilege outweighed petitioner's right of confrontation.

Petitioner submits that *Roviaro* was never intended to be applied to a testifying informant in a manner which permits the Government to shield its trial witnesses from inquiry as to their informant status.*

When this Court has spoken of the right of confrontation, it has traditionally done so in the strongest of terms recognizing the right of confrontation, at trial against adverse prosecution witnesses, to be a fundamental right and a hallmark of due process of law. *Pointer v. Texas*, 380 U.S. 400 (1965); *Douglas v. Alabama*, 380 U.S. 415 (1965); *Brookhart v. Janis*, 384 U.S. 1 (1966). In *Davis v. Alaska*, 415 U.S. 308 (1974) a conviction was reversed due to a prohibition on cross-examining a prosecution witness about his juvenile record and related status; the Court said:

> "Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested. Subject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation, the cross-examiner is not only permitted to delve into the witness' story to test the witness' perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, *i.e.*, discredit, the witness . . . A more particular attack on the witness' credibility is effected by means of cross-examination directed toward revealing possible bias' prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is 'always relevant as discrediting the witness and affecting the weight of his testimony'." 415 U.S. at 315.

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* In *Smith v. Illinois*, 390 U.S. 129, 132, fn. 8 (1968), this Court suggested that *Roviaro* was not "relevant" where the informant was a prosecution trial witness.

The cross-examiner may not be put to the burden of establishing beforehand what his cross-examination will develop and this Court warned as long ago as 1930 that denials of confrontation may not be dismissed because the trial judge sees no particular prejudice to the defendant in not being able to discredit prosecution witnesses. *Alford v. United States*, 282 U.S. 687 (1930).

In *Smith v. Illinois*, 390 U.S. 129 (1968) this Court held that a testifying informant is subject to cross-examination about something so fundamental as his true name and address:

> Yet when the credibility of a witness is an issue, the very starting point in 'exposing falsehood and bringing out the truth' through cross-examination must necessarily be to ask the witness who he is and where he lives. The witness' name and address open countless avenues of in-court examination and out-of-court investigation. To forbid this most rudimentary inquiry at the threshold is effectively to emasculate the right of cross-examination itself. 88 S. Ct. at 750.

Quoting from *Alford, supra* the Court in *Smith* noted:

> "It is the essence of a fair trial that reasonable latitude by given the cross-examiner, even though he is unable to state to the court what facts a reasonable cross-examination might develop. Prejudice ensues from a denial of the opportunity to place the witness in his proper setting, and put the weight of his testimony and his credibility to a test, without which the jury cannot fairly appraise them. . . .

The issue in the present case appears not to arise often because of the general practice that when the Government calls an informant to testify it reveals to the defense that in fact the witness was an informant. *See*

generally *United States Ex Rel. Abbott v. Twomey*, 460 F.2d 400, (7th Cir. 1972), *United States v. Woods*, 486 F.2d 172 (8th Cir. 1973), *United States v. Pennick*, 500 F.2d 184 (10th Cir. 1974), *United States v. Bruneau*, 594 F.2d 1190 (8th Cir. 1979). *See also Jencks v. United States*, 353 U.S. 657 (1957) (confidentiality of prior statements of witnesses must give way to defendant's interest in impeachment of witnesses).

No case has been found which has allowed the procedure employed in this prosecution and it is doubtful that any such precedent exists in light of the clear instructions from this Court on the function of cross-examination and the fundamental values protected by the Confrontation Clause. The decision in the instant case seriously undermines the principles of cases which are established precedent of this Court. The Government, subject to *Roviaro*, is under no obligation to call its informants as trial witnesses or disclose their identities in advance of trial but it strikes at the heart of the Confrontation Clause to permit continued shielding of informants when they are placed on the witness stand to give testimony before a jury. We urge that the Court grant certiorari to review this substantial departure from this Court's decisions on the Confrontation Clause.

Point II

Petitioner was denied due process of law by the failure of the Government to prove beyond a reasonable doubt that the alleged omitted material fact was one required to be disclosed and the trial court improperly submitted an issue of law to the jury for its resolution.

The Information (App. G) charged that Petitioner had failed to disclose a material fact in the LM-2 for, as here pertinent, 1980. That material fact was:

> To wit, that Gordon G. Grubb had been paid by Local 830 salary, allowances, direct and indirect disbursements in excess of the amounts reported.

The Government made no contention that the sums going from union to agents to Grubb constituted "salary, allowance, direct . . . disbursements . . ." and, instead, proceeded on the theory that an indirect disbursement had been made to Grubb which was reportable as a Schedule 9 disbursement to an officer, rather than a Schedule 10 disbursement to a business agent (the sums had been reported on Schedule 10).

On post-trial motions, Petitioner argued to the lower court that the evidence was insufficient to prove an "indirect disbursement" since the Government had presented no evidence that the disbursements should have been characterized in that manner, despite the Government having called expert witnesses who could have been questioned by the Government to possibly establish this element of proof. The trial court avoided this point by holding that proof that the sums constituted indirect disbursements was not an element of proof in this case:

> Simply stated, the Government was not required to prove the monies received by Grubb were indirect disbursements (App. 8a).

Since the Information had alleged that the omitted fact was that Grubb had been paid "by Local 830 salary, allowances, direct and indirect disbursements in excess of the amounts reported", and the government had not presented evidence of "salary . . . allowances . . . direct disbursements", Petitioner contends that he has been convicted without proof beyond a reasonable doubt that the omitted fact *i.e.* the sums received by Grubb, was required to be disclosed under the Act.

The lower court, in effect, relieved the Government of its obligation to prove each element of the charged offense beyond a reasonable doubt. In a prosecution for omitting a material fact (as distinguished from affirmatively making a false statement) it is necessary that the prosecution prove that there existed a legal obligation to disclose the fact. *Chiarella v. United States*, 445 U.S. 222 (1980); *see United States v. Diogo*, 320 F.2d 898 (2d Cir. 1963). As this Court stated in *In Re Winship*, 397 U.S. 358 the beyond a reasonable doubt standard is of constitutional dimension:

> "Lest there remain any doubt about the constitutional stature of the reasonable doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of *every* fact necessary to constitute the crime with which he is charged." (emphasis added).

On post-trial motions, the lower court emphasized the remedial purpose of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §439 and suggested that the broad sweep of that statute would not be defeated by technical constructions of an indictment or information (App. 4a). But the lower court gave little or no weight to what it in effect was doing, *i.e.* although the Government had failed to prove at trial that the facts were reportable under the Act, in the manner alleged in the Information, the Court had created a broader duty of disclosure based on its construction of the remedial purpose of the statute. Petitioner has no quarrel with the proposition that the Congressional intention in the Act beckons in the direction of a broad embrace of reportable transactions and that any given transaction must be measured against this standard. But it is a radically different thing to say, as the lower court did, that the Government was not obligated to prove the pled report-

able character of the transaction in order to sustain an omission of material fact prosecution.

The trial court did not entirely relieve the Government of proving a reportable transaction although it did not have to be, under the trial court's rationale, an "indirect disbursement." Instead, the trial court focused on the words, in the Information, "paid by Local 830" and viewed the operative consideration to be whether the funds, when received by Grubb, were "union" funds or "agents' " funds, thereby making the issue turn on title to the money.

Petitioner argued that this was a question of law which was required to be determined by the court, not submitted to the jury. Submission to the jury of this arcane, and traditionally legal, decision effectively watered down the government's burden of proof by allowing the jury to decide a question of law which should have been decided in Petitioner's favor by the trial court under applicable legal principles removed from the passions of a particular case and a particular jury's perception of what should have disclosed by Petitioner to the membership of Local 830.

The funds had in fact been disbursed to the agents (as was reported) and as a matter of law they had title to the money. *United States v. Budzanosky*, 462 F.2d 443 (3d Cir. 1972); *Woxberg v. United States*, 329 F.2d 284 (9th Cir. 1964), *cert. denied*, 379 U.S. 823; *United States v. Evans*, 572 F.2d 455 (5th Cir. 1978). The Uniform Commercial Code, which is part of the statutory law of Pennsylvania, would require that the court hold that the funds belonged to the agents. 13 Pa. C.S.A. §3802(a)(2) and §3603(a). The union's obligation was discharged when the agents were paid and a "disbursement" to the agents had taken place, properly reportable on Schedule 10 as had occurred, *See First Pa. Bank, S.A. v. Triester*,

380 A.2d 826 (Pa. Super. 1977). The lower court recognized that there is split in the circuits regarding the applicability of the Uniform Commercial Code to issues such as this. *Compare, United States v. Maxwell*, 588 F.2d 568 (7th Cir. 1978) with *United States v. Collins*, 464 F.2d 1163 (9th Cir. 1972).

The lower court impermissibly substituted the submission to the jury of a subsidiary issue of pure law for the essential issue *i.e.* whether the government had proved a reportable transaction as pled. Petitioner, who had no connection with these transactions other than knowledge of them, was convicted of making the wrong choice in reporting the disbursements to the agents rather than to Grubb where the Government never proved that in fact the proper manner of reporting was to charge the disbursement to Grubb.*

Petitioner submits that a grant of certiorari is warranted on this issue.

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* Absent such proof, presumably Petitioner could have been convicted, on a different prosecutor's charging decision, even if Petitioner had reported the disbursements as going to Grubb. Under the trial court's broad submission to the jury, a different jury might have concluded that the LM-2 was defective for failure to characterize the disbursements as going to the agents!

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Writ of Certiorari should be granted.

Respectfully Submitted,

/s/ John Rogers Carroll
JOHN ROGERS CARROLL,
Esquire

/s/ Thomas Colas Carroll
THOMAS COLAS CARROLL,
Esquire

CARROLL & CARROLL
Suite 1206
615 Chestnut Street
Philadelphia, Pennsylvania 19106

APPENDIX A

UNITED STATES OF AMERICA

v.

Vincent T. IMPROTO.

Crim. No. 81—00309.

United States District Court,
E. D. Pennsylvania.

July 8, 1982.

On union local president's posttrial motions after he was convicted of making a false report to the Government concerning disbursement of union funds, the District Court, Ditter, J., held that: (1) laundering payment to union official by passing it through hands of local's business agents did not invalidate federal reporting requirements as a matter of law; (2) Government was not required to prove that monies received by the union official were indirect disbursements; (3) instruction regarding "indirect disbursement" was proper; (4) Government was not required to disclose identities of confidential informants; and (5) failure to disclose identities of the informants did not deny defendant his constitutional right to full and unfettered cross-examination.

Motions denied.

Michael L. Levy, Asst. U.S. Atty., Philadelphia, Pa., for the U.S.

Thomas A. Bergstrom, Philadelphia, Pa., for defendant.

OPINION

DITTER, District Judge.

In this case, a union officer was convicted of making a false report to the Government concerning the disbursement of union funds. His post trial motions contend there was insufficient evidence to support his conviction and that there was error in pre-trial and trial rulings. For the reasons which follow, his motions must be denied.

Charged in a three count criminal information, Vincent T. Improto, president of Local Union No. 830 of the International Teamsters, Chauffeurs, Warehousemen and Helpers of America (Local 830),[1] was convicted by a jury on one count of violating section 209(b) of Title II of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. § 439(b),[2] for signing and filing a materially false LM—2 for 1980. Form LM—2 is an annually required disclosure statement to the United States Department of Labor reflecting, *inter alia*, monetary disbursements by a union to its business agents and officers.[3] Viewed in the light most favorable to the Gov-

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1. For a time in 1981, Improto was secretary-treasurer of the union, replacing Gordon G. Grubb.

2. Title 29, United States Code, section 439(b) states in its entirety:

> Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any document, report, or other information required under the provisions of this subchapter shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

3. Title 29, United States Code, § 431(b) states in pertinent part:

> Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information in such detail as may be necessary accurately to disclose

ernment, as the jury's verdict requires, the evidence showed that the 1980 LM—2 filed by Local 830 and signed by Improto was materially false because it failed to report that payments of $60 each week by the union to its business agents for union expenses were kicked back to Gordon G. Grubb, secretary-treasurer of the union. Rather than reporting the expense money as indirect disbursements to Grubb, the LM—2 listed these payments as disbursements to the business agents. The testimony of the ten business agents and Matilda Garczynski, Grubb's secretary, revealed that each week, Garczynski would cash the agents' paychecks, hand them the money including the $60 allotted for expenses, and then collect the $60 for Grubb.[4] Upon receipt of the $60 from each agent, Garczynski noted payment on a list she kept.[5] There was no suggestion that Improto asked for or received any of the money in question—or that he required any of the business agents to pay it to Grubb. Because he knew of the payments to Grubb and signed the 1980 LM—2 which failed to report them, Improto violated section 439(b).

Improto has filed motions for judgment of acquittal, arrest of judgment, and for a new trial. Although there is

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its financial condition and operations for its preceding fiscal year—
(1) . . .
(2) . . .
(3) salary, allowances, and other direct or indirect disbursements (including reimbursed expenses) to each officer . . .
(4) . . .
(5) . . .
(6) . . .

4. Grubb offered the business agents a variety of reasons to persuade them to make the payments, including the need to have a union political fund and his own personal problems.

5. The record indicates that one business agent, Robert A. Oettl, paid monthly to Garczynski for Grubb because the agent did not live or work near the offices of Local 830. See N.T. 1-116.

little precedent for the issues raised by this unique fact pattern and Improto's arguments find some support in the relevant legal authority, I am compelled by the purpose of the LMRDA and the caselaw as it applies to these facts to deny defendant's motions.

Improto asserts he is entitled to judgment of acquittal because under the law and the evidence the money Grubb received came from the business agents and not from the union. In short, Improto contends that the LM—2 for 1980 was correct because the union was not required to report money paid to Grubb from sources other than the union itself and here the money came from the business agents individually.

[1] The problem with this argument is that it ignores reality. Improto admits—indeed he could not contest—that an LM—2 would be false if it intentionally omitted payments to Grubb from the union. The question in this case, therefore, is whether laundering a payment to a union official by passing it through someone else's hands invalidates the federal reporting requirements as a matter of law. I conclude that it does not. The purpose of the LM—2 is to let union members know what is happening to their money. The fact that it may take a circuitous route from treasury to pocket does not change what is happening. It is fatuous to suggest that as a matter of law the government's reporting requirements were nullified because Grubb allowed the business agents to hold the $60 momentarily before he took it for himself.

Improto contends, however, that this is precisely the result compelled by the Uniform Commercial Code and the evidence. According to Improto, I should have ruled as a matter of law the union disbursed the money to the business agents and that the LM—2 was therefore correct. It follows, of course, according to this argument, that it was error to submit to the jury the question of

whether the agents or the union had title to the money that was paid to Grubb.

[2] Defendant is incorrect that the question of who had title to the money was for the court to decide as a matter of law.[6] "Whether an item is [union] property is *ordinarily a question of law*, and *when the facts so establish*, it is proper for the court to give such an instruction." *United States v. Miller*, 520 F.2d 1208, 1211 (9th Cir. 1975) (emphasis supplied). Although the basic facts were not in dispute, the ownership of the money was the key issue in the case and depended upon inferences to be drawn by the jury. As stated in my instructions, evidence showing the money was the union's included: the relationship between the size of the payments from the union to the business agents and the size of the payment to Grubb; the frequency and regularity of the payments; the number of business agents who made payments to Grubb; the position of power which Grubb held over each business agent, i.e., the power to hire or fire; the involuntary nature of the payments, if they were involuntary; the amount of time the business agents actually

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6. In the cases cited by defendant, the facts were such that the court *could* properly rule as a matter of law as to the ownership of the property or money at issue. *See United States v. Evans*, 572 F.2d 455 (5th Cir.), *cert. denied*, 439 U.S. 870, 99 S.Ct. 200, 58 L.Ed.2d 182 (1978); *United States v. Budzanoski*, 462 F.2d 443 (3d Cir.), *cert. denied*, 409 U.S. 949, 93 S.Ct. 271, 34 L.Ed.2d 220 (1972); *Woxberg v. United States*, 329 F.2d 284 (9th Cir.), *cert. denied*, 379 U.S. 823, 85 S.Ct. 45, 13 L.Ed.2d 33 (1964). The caselaw, however, is replete with instances where, as in this case, the question of title or control was properly left to the jury. *See United States v. Eden*, 659 F.2d 1376, 1380 (9th Cir. 1981); *United States v. Rowen*, 594 F.2d 98 (5th Cir.), *cert. denied*, 444 U.S. 834, 100 S. Ct. 67, 62 L.Ed.2d 44 (1979); *United States v. Friedman*, 445 F.2d 1076 (9th Cir.), *cert. denied*, 404 U.S. 958, 92 S.Ct. 326, 30 L.Ed.2d 275 (1971); *United States v. Alessio*, 439 F.2d 803 (1st Cir. 1971) (per curiam); *United States v. Jackson*, 436 F.2d 39 (9th Cir. 1970), *cert. denied*, 403 U.S. 906, 91 S.Ct. 2209, 29 L.Ed.2d 682 (1971).

had the money in their possession; the fact that the so-called "expense money payments" continued even when the business agents were on vacation; the fact that when the amount of expense money paid to the business agents increased, the payment to Grubb also increased; the fact that all transactions were in cash; and the fact that a union employee, Grubb's own secretary, took the money from each business agent, kept a record of the payments, and handed the money to Grubb. Further support for the jury finding, although not mentioned in my instruction, was that each paycheck received by a business agent was a lump sum representing his salary less deductions, plus expense money. The salary was the business agent's compensation. Because the expense money purportedly was paid to the agents to use for union purposes, it was always union money until spent for union purposes. Thus, the payments to Grubb were of union monies, never the money of the agents. On the other hand, there was evidence upon which the jury could have found the money given to Grubb was the agents' own. This evidence included the testimony of some agents that they felt the money was coming from their own pockets; the fact that even though the payments to Grubb stopped, the business agents continued to receive money for expenses from the union; and the voluntary nature of the payments; if they were voluntary. In the face of such conflicting evidence, the question was properly left for the jury. See note 6 *supra*.

I reject the strict Uniform Commercial Code analysis advanced by Improto that as soon as the agents' checks were cashed, a disbursement to the agents occurred because the union lost all dominion and control over the assets represented by the checks, and likewise suffered a diminution of its cash assets. *See United States v. Budzanoski, supra*, 462 F.2d at 451; 13 Pa. C.S.A. §§ 3603(a), 3604(a), 3802(a)(2) (Purdon 1981). First, to

adopt such a rigid analysis in this case frustrates the purpose of the LMRDA to insure that all financial transactions of the union and its officers are disclosed to union members so they can root out questionable practices of union officers.[7] Second, *United States v. Budzanoski, supra*, offers no salvation to Improto. *Budzanoski* makes the point that when the payees received their checks, a disbursement occurred to them, and the union no longer exercised control over the funds. Our case, however, is different. Even though the business agents received the funds, the union, via Grubb, continued to exercise control over the money through, 1) Grubb's position of authority in the union, i.e., the power to hire and fire, continue or discontinue the payments, 2) the continuous nature of the transaction, payment and then immediate return of the money, and 3) the fact that Grubb's secretary cashed the checks and received the money immediately. Notwithstanding the above evidence, Improto speaks of the union losing control over the funds. Actually, Grubb was the union. He controlled it in every respect, and it did what he said. When Grubb told the business agents to give him the expense money, the agents had no choice but to comply. To argue, therefore, that the union/Grubb lost control over the funds in favor of the business agents due to the intricacies of commercial law belies reality. It simply does not follow that every time someone gets a check, the payor relinquishes control of the funds which the check purports to represent. For reasons stated above, ours is the classic non-relinquishment case.

[3] Further arguing for acquittal, Improto contends the Government's proof was insufficient because there

7. *See United States v. Maxwell*, 588 F.2d 568, 573 (7th Cir. 1978), *cert. denied*, 444 U.S. 877, 100 S.Ct. 163, 62 L.Ed.2d 106 (1979), where the Court of Appeals for the Seventh Circuit rejected the commercial law analysis followed in *United States v. Collins*, 464 F.2d 1163 (9th Cir. 1972).

was no evidence defining the monies received by Grubb as "indirect disbursements," the term charged in the information. Asserting the Government was required to prove the payments by the business agent to Grubb were indirect disbursements as an essential element of the crime charged, Improto posits that the Government's failure to do so necessitates the court grant judgment of acquittal. Although I agree that no evidence was introduced defining "indirect disbursement,"[8] I do not agree with Improto's conclusion. In charging Improto with violating 29 U.S.C. § 439(b), the Government was required to prove the following things beyond a reasonable doubt:

1. that the defendant knew Grubb was getting money from the union which the business agents had received as expense money;

2. that the defendant knew the payment of these monies to Grubb had to be reported on the 1980 LM—2, and

3. that the defendant knew the payment of these monies was not reported on the 1980 LM—2 and therefore, the LM—2 was false.

See N.T. 4—62 to 4—63; *United States v. Ferrara*, 451 F.2d 91, 96—97 n.10 (2d Cir. 1971) *cert. denied*, 405 U.S. 1032, 92 S.Ct. 1291, 31 L.Ed.2d 489 (1972). Simply stated, the Government was not required to prove that monies received by Grubb were indirect disbursements.[9] A similar argument was raised and rejected in *United*

8. Although the LM-2's were introduced into evidence, the instructions to the LM-2 containing a definition of "indirect disbursement" were not made a part of the record.

9. Furthermore, that the Government could not show how the LM-2 should have been filled out to be accurate is irrelevant. This is a burden of proof above and beyond the elements of the crime.

States v. Bath, 504 F.2d 456 (10th Cir. 1974). In *Bath*, the defendant was convicted of violating section 439(b) because the LM—2 falsely reported $17,730. as strike benefits to members, when in reality, the money at issue was a strike expense paid to hired pickets. Arguing that the Government's proof failed because it had not shown the money could only have been properly reported under "Other Disbursements" as charged on the indictment, Bath argued his conviction could not stand. In disagreeing with Bath and refusing his motion, the Court of Appeals for the Tenth Circuit dismissed his contentions with reasoning that is applicable in this case. First, it interpreted Bath's reading of the indictment as overly technical and as ignoring the import of the charges against him. The essence of the charge against Bath was that he "knowingly reported the money as having gone to members on strike when it was actually used to pay hired pickets." *Bath, supra*, 504 F.2d at 459. The same reasoning applies here. The essence of the charge against Improto was that he knowingly reported the money as having gone to the business agents for union expenses when he knew it was actually being given to Grubb. As stated in *Bath, supra*, to require the government to prove the money was an indirect disbursement to Grubb, "unnecessarily defeat[s] the purpose of the LMRDA to insure that union officers accurately report to union members the details of all disbursements of union money." *Bath, supra*. Second, the *Bath* court reasoned that even if it adopted Bath's reading of the indictment, the Government's failure of proof need not be fatal to Bath's conviction. *Bath, supra*, 504 F.2d at 459 n.2. "It is not essential that everything in an [information] be proved. It is only necessary to prove so much thereof as establishes, *prima facie*, that there has been a violation of the statute involved." *Bath, supra*, quoting *United States v. Archer*, 455 F.2d 193, 194 (10th Cir.), *cert. denied*, 409 U.S. 856, 93 S.Ct. 135, 34 L.Ed.2d 100 (1972). In this case,

the government met its burden as described in *Bath* and *Archer*.

[4] I also reject Improto's challenge to my instruction regarding "indirect disbursement". My instruction, in pertinent part, was as follows:

> An indirect disbursement to an officer is a payment made to another party of cash, or some other thing of value, and received by that other party on behalf of the officer. In other words, it is a payment to a third party for the benefit of the officer, made by the union.

The definition of "indirect disbursement" in the instructions to the LM—2 was:

> An 'indirect disbursement' . . . is a payment made by the labor organization to another party for cash, property, goods, services or other things of value received by or on behalf of the officer. 'On behalf of the officer' means received by a party other than the officer or the labor organization for the personal interest or benefit of the officer.

3 Lab.L.Rep. (CCH) ¶ 7352. Not only do I think that the definition on the LM—2 is not exclusive, my charge was substantially similar to the LM—2 definition, and therefore, there was no error.[10] *United States v. Bath, supra,* 504 F.2d at 459-60. *See also United States v. Budzanoski, supra,* 462 F.2d at 451 & n.5 (court used dictionary

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10. Improto's vagueness argument was rejected in *United States v. Budzanoski, supra,* 462 F.2d at 452. There is no requirement that the Government show how the LM-2 would have been accurate. *United States v. Budzanoski, supra.* Similarly, Improto's defense that he had no choice but to sign because he was required to by law must be rejected. Improto should have refused to sign and contacted law enforcement officials.

definition of 'disbursement'). Accordingly, Improto's motion for judgment of acquittal will be refused.[11]

In this motion for a new trial, Improto contends I erred in refusing to order disclosure by the Government of the identities of the confidential informants.[12] Furthermore, because he was precluded from cross examining the witnesses as to their possible informant status, Improto claims his constitutional right to full and unfettered cross examination was denied.[13]

Some background facts are necessary before examining defendant's arguments. Evidently, people with knowledge of Grubb's kickback scheme contacted law enforcement officials. Fearful of their own culpability, these individuals sought and eventually were granted immunity. During the course of the Government's investigation into the union, these individuals continually sup-

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11. Defendant's motion for arrest of judgment pursuant to Fed. R.Crim.Proc. 34 must also be denied. Initially I note that the information tracks the language of 29 U.S.C. §§ 431(b) and 439(b), and therefore, the information is facially sufficient. Furthermore, merely because the information states the money was paid by the business agents to Grubb does not preclude an interpretation that the union had title to the money. As stated in the information, the payments to Grubb were of *union* expense money. Therefore, it can be inferred the union had title to the money.

12. Because it has never been revealed to defendant whether there was more than one confidential informant, my use of the plural throughout this opinion should not be taken as a statement that more than one informant exists.

13. Improto also argues that because he did not know the identities of the informants, he may have inadvertently revealed defense strategy to them during preparation for trial. As I stated at trial, there is no reason why defendant's counsel should or would go over trial strategy with persons who are essentially fact witnesses. Furthermore, defendant had no reasonable basis to expect that the informants, or other potential witnesses, would respect confidences given to them by the defense. Therefore, this argument for a new trial is without merit. See N.T. 2-7 through 2-8.

plied information to Special Agent Quinn John Tamm of the Federal Bureau of Investigation. Based on the information received, Agent Tamm swore out three affidavits which were the basis of three search warrants for the business records of Local 830 located in the union offices (August 15 and 18, 1980; May 7, 1981). After the May 7, 1981, search, Joel Slomsky, Esquire, counsel to Local 830 and Gordon Grubb, suspecting one or more of the business agents were confidential informants, requested each business agent sign a sworn statement that he was not an informant. Each business agent complied with Mr. Slomsky's request.[14] Improto contends my failure to compel disclosure of the informants' identities precluded him from testing the sufficiency and accuracy of Agent Tamm's affidavits, and prohibited impeachment of the informants with their false affidavits (if they were business agents), statements to Agent Tamm, and grand jury testimony. Improto also argues that he was deprived of Brady and Jencks material as to the informants.

[5, 6] I will first address the disclosure issue. The Supreme Court has recognized that the government has a qualified privilege to withhold from disclosure the identity of persons who have furnished information of violations of the law to enforcement officials. *Roviaro v. United States*, 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed.2d 639 (1957). Because there is no fixed rule regarding disclosure of an informant's identity, the court must balance the public interest in protecting the flow of information to the government against the defendant's right to prepare his case. *Roviaro, supra*, 353 U.S. at 59-62, 77 S.Ct. at 627-29; *United States v. Jiles*, 658 F.2d 194, 196 (3d Cir. 1981). "The burden is on the defendant to show [a spe-

14. James T. O'Connor did not swear he was not a confidential informant because at the time all such affidavits were sworn to, O'Connor no longer was a business agent.

cific] . . . need for disclosure." *Jiles, supra*, 658 F.2d at 197. My finding during trial that defendant had not met his burden to compel disclosure remains unchanged. See N.T. 2—2 through 2—9. At trial, I noted that, 1) the nature of the crime and main defenses were not dependent upon eyewitness testimony of a single event, 2) the informants were going to testify at trial, making disclosure of their identities less important than in a case where they may not appear and the defendant must know their identities to seek their production at trial, 3) the informants did not play a crucial or active role in the criminal acts or underlying events, 4) the Government had assured me that all Jencks and Brady material had been produced, a concern of the defendant in seeking disclosure of the informants' identities, 5) methods of impeachment of all witnesses could be developed irrespective of whether or not one or more was an informant, and 6) the informants might have suffered economic sanctions if their names were revealed.[15] After balancing the above observations with the defendant's need to know the informants' names, I concluded that revealing the informants' identities would probably not affect the outcome of the trial, and thus, failing to do so was not necessary for defendant to have a fair trial. In short, the lack of knowledge of the identities of the informants did not impair defendant's ability to prepare his defense. I am convinced this reasoning was valid, and my refusal to require disclosure was not error. Accordingly, I will not grant defendant a new trial on this basis.

[7-10] As to the issue of restricted cross examination, I will also deny defendant's motion for new trial. Initially, I note that the FBI 302's regarding the confidential in-

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15. This rebuts defendant's argument that if confidential informants testified at trial under a grant of immunity, their continued confidential status resulted in a fraud on the court.

formants were not Jencks material because the 302's were not statements of the informants. Under the Jencks Act, a statement of a witness is defined as follows:

(1) a written statement made by the witness that is signed or otherwise adopted or approved by him;

(2) a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or

(3) a statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury.

18 U.S.C. § 3500 (1970) also codified in Fed.R.Crim. Proc. 26.2(f) (1980). Because the 302's do not fit into any of the above classifications, they are not statements of a witness producible under the Jencks Act. *See Palermo v. United States*, 360 U.S. 343, 351, 79 S.Ct. 1217, 1224, 3 L.Ed.2d 1287 (1959); *Government of Virgin Islands v. Lovell*, 410 F.2d 307, 309 (3d Cir. 1969). Notwithstanding my determination as to the Jencks issue, if the 302's, contained information favorable to the defendant on the issues of guilt or punishment, the FBI reports may have been subject to production as Brady material. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). As noted repeatedly in his motions and oral argument, Improto claims the 302's and identities of the informants, may have been of impeachment value to him.[16] *Brady v. Maryland, supra*, counsels that due process requires the production of evidence favorable to an accused where the evidence is material either to guilt or

16. If defendant learned that one or more of the informants was a business agent, defendant could have impeached the informants with their false affidavits given to Joel Slomsky, Esquire. See p. 910 *supra*.

punishment. In *United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976), the Supreme Court delineated the standards of materiality for three specific fact patterns. Cases after *Agurs* have focused on the standard of materiality where the information sought has only impeachment value. The Third Circuit in *United States v. McCrane*, 547 F.2d 204 (3d Cir. 1976), expressed the standard of materiality as follows: evidence with impeachment value only is Brady material if, when considering the entire record, it creates a reasonable doubt which otherwise did not exist. *McCrane, supra*, at 205. As stated in *Hughes v. Hopper*, 629 F.2d 1036 (5th Cir. 1980), and *United States v. McCrane, supra*, from the Third Circuit, for nondisclosure of impeachment evidence to be a Brady violation, it must have direct bearing on the credibility of a key prosecution witness. As I see it, there were *no* key prosecution witnesses in this case because all fact witnesses testified to essentially the same thing. Therefore, had defendant impeached the informants, the remaining testimony still would have been uncontradicted, and the jury's findings would have been unaffected. Accordingly, my refusal to compel the government to produce the 302's and the informants' identities was not a Brady violation. Furthermore, if defendant was restricted in cross examining the informants by a failure to know their identities or have their FBI 302's, because of the similar testimony by the other fact witnesses, defendant suffered no prejudice, and any error was harmless. *United States v. Lay*, 644 F.2d 1087 (5th Cir. Unit A 1981); *United States v. Jones*, 557 F.2d 1237 (8th Cir. 1977); *United States v. Trowery*, 471 F.Supp. 23 (W.D.Pa.1978), *aff'd mem.*, 591 F.2d 1337 (3d Cir. 1979).

[11, 12] As regards the search warrants and Agent Tamm's affidavits, the cross examination issue arises in a dual context. First, defendant argues that if the inform-

ants lied to Tamm, the facts on which the search warrant were based were untrue, and therefore, the evidence seized as a result of the searches should have been suppressed. The focus of this argument misses the point. So long as Agent Tamm had good reason to believe the informants were telling the truth, and actually did believe what he had been told, Tamm could lawfully sign an affidavit that the records of Local 830 contained evidence of criminal activity by union officers. *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978); *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972); *Rugendorf v. United States*, 376 U.S. 528, 84 S.Ct. 825, 11 L.Ed.2d 887 (1964). Whether the informants actually lied to Tamm is of tangential relevance to the issue of Tamm's state of mind when he presented the warrant affidavits to the issuing magistrate. Therefore, the proper focus is whether Tamm knowingly or recklessly provided false affidavits. *See Franks v. Delaware, supra*, 438 U.S. at 155-56, 98 S.Ct. at 2676. The record is devoid of evidence showing an intentional or reckless falsehood by Tamm. Additionally, because the evidence gathered in the searches conformed to the affidavits supporting the warrants and served as a basis for this prosecution, inferences can be drawn that Tamm did not swear falsely, and he was supplied accurate information by the informants. Accordingly, there is no merit to Improto's contention.

[13, 14] Second, defendant claims that without knowing the identities of the informants and having their FBI 302's, he could not cross examine Tamm as to the accuracy of his affidavits.[17] *Franks v. Delaware, supra*, gov-

17. Improto also argues that the Court erred in denying his motion to suppress evidence seized during a search of Local 830's offices. As I stated pre-trial, the affidavits of Agent Tamm supporting the search warrants contained sufficient information from which Tamm and the issuing magistrate could have concluded that the

erns the procedure for challenging the truthfulness of factual statements made in an affidavit supporting a search warrant.

> [W]here the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request.

Franks v. Delaware, *supra*, 438 U.S. at 155-56; 98 S.Ct. at 2676. To mandate a hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross examine the affiant. *Franks v. Delaware*, *supra*, 438 U.S. at 171, 98 S.Ct. at 2684. Not only must the challenger point out specifically the portion of the warrant affidavit that is claimed to be false, the allegations of falsehood should be accompanied by an offer of proof. *Franks v. Delaware*, *supra*. Defendant did not make a showing of falsehood as required above. Rather than specifically pointing to the alleged falsehoods, defendant made conclusory allegations in a fishing expedition to cross examine Tamm. Although, defendant's insubstantial showing could be blamed on his failure to know the identities of the informants or to

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informant was credible and the information reliable. *Spinelli v. United States*, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969); *Aguilar v. State of Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964). For example, the facts provided regarding the crime were highly specific and corroborated by the business records of the union. Furthermore, the agent was informed that the sources of the information were business agents of the union who were participants in the kickback scheme. *See Spinelli*, *supra*, 393 U.S. at 425, 89 S. Ct. at 593 (White, J., concurring). Finally, Tamm knew his informants were reliable because each had provided accurate information regarding criminal activity in Local 830 on several prior occasions.

have their 302's, defendant could have had the business agents, whether or not one or more of them were informants, supply him with statements contradicting Tamm's affidavit. Having failed to supply contradictory statements or adequately explain their absence, defendant was not entitled to a hearing wherein he could cross examine Agent Tamm regarding the warrant affidavits. *See Franks v. Delaware, supra.* Therefore, defendant's argument regarding restricted cross examination is specious.

CONCLUSION

Accordingly, for the above stated reason, defendant's post trial motions must be denied.

ORDER

AND NOW, this 8th day of July, 1982, for the reasons expressed in the accompanying opinion, defendant's post-trial motions are denied and the defendant, Vincent T. Improto is ordered to report for sentence on Friday, August 6, 1982, at 9:30 A.M. in Court Room 6A, United States Courthouse, Philadelphia, Pennsylvania.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-1483

UNITED STATES OF AMERICA

vs.

IMPROTO, VINCENT T.
VINCENT IMPROTO, *Appellant*

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Crim. No. 81-00309-02)
District Judge: Honorable J. William Ditter, Jr.

Argued
January 7, 1983
Before: ALDISERT, GIBBONS, AND
HIGGINBOTHAM, *Circuit Judges.*

JUDGMENT ORDER

"After considering the contentions raised by appellant, to-wit, that: (1) the government failed to prove that an indirect disbursement of union funds was made which was required to be disclosed on Form LM-2; and (2) the

lower court's refusal to order disclosure of the identity of testifying confidential informants and permit cross-examination of them violated defendant's rights to due process and confrontation; and for the reasons set forth in the district court opinion by the Honorable J. William Ditter, Jr., *United States v. Improto*, 542 F.Supp. 904 (E.D.Pa. 1982), it is

ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed.

BY THE COURT,

_____

Circuit Judge

Attest:

_____

Sally Mrvos, Clerk
DATED: January 7, 1983

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-1483

UNITED STATES OF AMERICA

vs.

IMPROTO, VINCENT T.
VINCENT IMPROTO, *Appellant*
(E.D. Pa. Crim. No. 81-00309-02)

SUR PETITION FOR REHEARING

Present: SEITZ, *Chief Judge*, and ALDISERT, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER and BECKER, Circuit Judges.

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not

having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,

_____

Circuit Judge

DATED: February 3, 1983

APPENDIX D

SUPREME COURT OF THE UNITED STATES

No. A-766

VINCENT T. IMPROTO,

Petitioner,

vs.

UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(xx),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 4, 1983.

/s/ William J. Brennan
WILLIAM J. BRENNAN
Associate Justice of the
Supreme Court of the
United States

Dated this 15th
day of March, 1983

APPENDIX E

29 U.S.C. § 439. Violations and penalties

(b) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any document, report, or other information required under the provisions of this subchapter shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

APPENDIX F

AMENDMENT V—CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI—JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defence.

APPENDIX G

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 81-00309

UNITED STATES OF AMERICA

v.

GORDON G. GRUBB
VINCENT T. IMPROTO

VIOLATION: 29 U.S.C. §439(B) (FILING A FALSE LABOR REPORT—3 COUNTS); 26 U.S.C. §7206(1) (SUBSCRIBING FALSE INCOME TAX RETURN—1 COUNT)

INFORMATION

COUNTS ONE THROUGH THREE

THE UNITED STATES ATTORNEY CHARGES:

1. At all times material to this information, Local Union No. 830 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter Local 830) was a labor organization as defined in Title 29, U.S.C., Section 402(i), representing individuals engaged in an industry affecting commerce, with its offices located at 1226 E. Hunting

Park Avenue, Philadelphia, in the Eastern District of Pennsylvania.

2. At all times material to this information, GORDON G. GRUBB was the elected Secretary Treasurer and Principal Executive Officer of Local 830 and was an officer as defined by Title 29, U.S.C., Section 402(n).

3. At all times material to this information, VINCENT T. IMPROTO was the elected President of Local 830 and was an officer as defined by Title 29, U.S.C., Section 402(n).

4. At all times material to this information, Local 830 was required by Title 29, U.S.C., Section 431(b) to file annual financial reports with the Secretary of Labor of the United States, signed by its president and secretary treasurer, which listed the salary, allowances and other direct or indirect disbursements paid to each officer (hereinafter Form LM-2).

5. On or about January 17, 1977, GORDON G. GRUBB raised the weekly expense money paid to each business agent of the union to sixty dollars ($60.00).

6. From on or about January 17, 1977, up to and including on or about July 1, 1980, GORDON G. GRUBB had each business agent pay back to him the sixty dollars in expense money.

7. On or about each of the dates listed below, (each date constituting a separate count of this information) in the Eastern District of Pennsylvania,

GORDON G. GRUBB and
VINCENT T. IMPROTO

did unlawfully and knowingly fail to disclose in a document and report required by law to be filed by Local 830 with the Secretary of Labor, to wit, the annual financial report, Form LM-2 a material fact, to wit, that GORDON G. GRUBB had been paid by Local 830 sal-

ary, allowances, direct and indirect disbursements in excess of the amounts reported.

Count	Date	Amount Not Reported
One	March 23, 1979	23,000.00
Two	March 25, 1980	31,000.00
Three	March 18, 1981	15,000.00

All in violation of Title 29, United States Code, Section 439(b).

COUNT FOUR

THE UNITED STATES ATTORNEY FURTHER CHARGES:

1. On or about April 15, 1980, in the Eastern District of Pennsylvania, GORDON G. GRUBB, a resident of Hatboro in the Eastern District of Pennsylvania, did willfully and knowingly make and subscribe a United States Individual Income Tax Return, Form 1040, verified by a written declaration that it was made under the penalties of perjury and which was filed with the Director, Internal Revenue Service Center, Mid-Atlantic Region at Philadelphia, Pennsylvania, which income tax return he did not believe to be true and correct as to every material matter in that the said income tax return reported other income (Line 21) as $10,916.00, when GORDON G. GRUBB then and there well knew that he had other income substantially in excess of $10,916.00.

In violation of Title 26, United States Code, Section 7206(1).

PETER F. VAIRA
United States Attorney